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CG's Lawn & Janitorial Service, LLC and Industrial Technical & Professional Employees Union, OPEIU Local 4873. Cases 15–CA–019117 and 15–CA–019314

February 28, 2013

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks summary judgment in this case on the ground that the admissions in the Respondent's answer are sufficient to establish that the Respondent violated the Act as alleged in the consolidated complaint. The Acting General Counsel therefore argues that there are no issues of fact and that an evidentiary hearing is unnecessary.

Upon charges and amended charges filed by Industrial Technical & Professional Employees Union, OPEIU Local 4873 (the Union), the General Counsel issued the consolidated complaint on November 19, 2009, against CG's Lawn & Janitorial Service, LLC (the Respondent), alleging that the Respondent violated Section 8(a)(1) and Section 8(a)(3) and (1) of the Act. The Respondent, acting pro se, filed an answer on January 27, 2010, admitting all of the allegations in the consolidated complaint except the allegations that the Respondent violated the Act and that its unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On February 23, 2010, the General Counsel filed with the Board a Motion for Summary Judgment. On February 25, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 11, 2010, the Respondent filed a response to the Notice to Show Cause. However, contrary to Section 102.114 of the Board's Rules and Regulations, the Respondent failed to file with the Board an affidavit of service showing that its response had been served on the Union and the Region. By letter dated September 28, 2012, the Board explained the service requirement to the Respondent and advised that failure to file an affidavit of service by October 12, 2012, could result in the rejection of the Respondent's response to the Notice to Show Cause. The Respondent did not file an affidavit of service. On December 7, 2012, the Board issued a second order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should

not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

As stated above, the Respondent's answer admits all the material factual allegations in the consolidated complaint. Thus, the Respondent admits that it issued discipline to certain named employees and terminated employee Richard Jones because the employees engaged in the concerted activity of participating in a work stoppage, in order to discourage them from engaging in such activities. The Respondent further admits that it disciplined certain named employees and terminated employee Richard Jones because the employees assisted the Union and engaged in concerted activities, in order to discourage them from engaging in such activities. The Respondent has not raised any defenses. Further, the Respondent did not file an appropriate response to the first Notice to Show Cause and has not responded to the second Notice to Show Cause. Accordingly, we find that all the allegations of the consolidated complaint are true and we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a limited liability company, with an office and place of business in Ft. Rucker, Alabama, has been engaged in the business of providing grounds maintenance services to the Federal Government at Ft. Rucker, Alabama. Annually, in conducting its operations described above, the Respondent has been engaged in providing grounds maintenance services to the United States valued in excess of \$50,000 and has a substantial impact on the national defense of the United States.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

| | | |
|-----------------|---|---------------------|
| Curtis McDaniel | - | Owner and President |
| Robert Williams | - | Project Manager |

¹ *Black Bear Mining*, 325 NLRB 960 (1998).

On about June 8 through June 9, 2009, the Respondent's employees, Bryon Belin, Willie Bigham, Tony Brown, Michael Clark, Robert Demoss, Larry Douglas, Virgil Hall Jr., Michael Harpis, Richard Jones, Steven King, Walter Ludlum, Brian Lynn, Glen Meissner, Mark Moonschein, Maurice Pringle, Steve Rhodes, Blake Sexton, Christopher Sexton, Ward Stewart, Jason Testerman, and other currently unknown similarly situated employees engaged in concerted activities with each other for the purposes of mutual aid and protection, by engaging in a work stoppage.

On June 8, 9, and 16, 2009, the Respondent issued discipline to employee Richard Jones. On June 9, 2009, the Respondent issued discipline to the remaining employees named above who engaged in the work stoppage and to other currently unknown similarly situated employees.

On about June 19, 2009, the Respondent terminated employee Richard Jones.

The Respondent disciplined the employees named above and other currently unknown similarly situated employees, and terminated Richard Jones because the employees engaged in the concerted activity of participating in a work stoppage, and in order to discourage the employees from engaging in these or other concerted activities.

The Respondent disciplined the employees named above and other currently unknown similarly situated employees, and terminated Richard Jones because the employees assisted the Union and engaged in concerted activity, and in order to discourage the employees from engaging in these or other concerted activities.

CONCLUSIONS OF LAW

1. By disciplining the employees named above and other currently unknown similarly situated employees, and terminating Richard Jones because the employees engaged in the concerted activity of participating in a work stoppage, in order to discourage the employees from engaging in these and other concerted activities, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By disciplining the employees named above and other currently unknown similarly situated employees, and terminating Richard Jones because the employees assisted the Union and engaged in concerted activities, in order to discourage the employees from engaging in these and other concerted activities, the Respondent has been discriminating in regard to the hire or tenure or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) of the Act by disciplining the employees named above and other similarly situated employees for engaging in a concerted work stoppage, and violated Section 8(a)(3) and (1) of the Act by disciplining the employees named above and other similarly situated employees for assisting the Union and engaging in concerted activity, we shall order that the Respondent remove from its files any and all references to the unlawful discipline of these employees, and notify them in writing that this has been done and that the unlawful discipline will not be used against them in any way.

Further, having found that the Respondent violated Section 8(a)(1) of the Act by terminating employee Richard Jones for engaging in a concerted work stoppage, and violated Section 8(a)(3) and (1) of the Act by terminating him for assisting the Union and engaging in concerted activity, we shall order the Respondent to offer Jones full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make Jones whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Additionally, in accordance with our recent decision in *Latino Express*, 359 NLRB No. 44 (2012), we shall order the Respondent to compensate Jones for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

The Respondent shall also be required to remove from its files any and all references to the unlawful termination of Richard Jones and to notify him in writing that this has been done and that the unlawful termination will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, CG's Lawn & Janitorial Service, LLC, Ft. Rucker, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing discipline to employees because they engaged in concerted activities for the purpose of mutual aid and protection.

(b) Issuing discipline to employees because they assisted the Union and engaged in concerted activities.

(c) Discharging or otherwise discriminating against employees because they engaged in concerted activities for the purpose of mutual aid and protection.

(d) Discharging or otherwise discriminating against employees because they assisted the Union and engaged in concerted activity.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files all references to the discipline of Bryon Belin, Willie Bigham, Tony Brown, Michael Clark, Robert Demoss, Larry Douglas, Virgil Hall, Jr., Michael Harpis, Richard Jones, Steven King, Walter Ludlum, Brian Lynn, Glen Meissner, Mark Moonschein, Maurice Pringle, Steve Rhodes, Blake Sexton, Christopher Sexton, Ward Stewart, Jason Testerman, and other similarly situated employees, to the extent that such documents exist, and within 3 days thereafter, notify them in writing that this has been done and that the discipline will not be used against them in any way.

(b) Within 14 days from the date of this Order, offer Richard Jones full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privilege previously enjoyed.

(c) Make Richard Jones whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(d) Compensate Jones for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(e) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful termination of Richard Jones, and within 3 days thereafter, notify him in writing that this has been done and that the

unlawful termination will not be used against him in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Ft. Rucker, Alabama, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representatives, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 8, 2009.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 28, 2013

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Sharon Block,

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT issue discipline to you because you engage in concerted activities for the purpose of mutual aid and protection.

WE WILL NOT issue discipline to you because you assist the Union and engage in concerted activities for mutual aid and protection.

WE WILL NOT terminate or otherwise discriminate against you because you engage in concerted activities for mutual aid and protection.

WE WILL NOT terminate or otherwise discriminate against you because you assist the Union and engage in concerted activities for mutual aid and protection.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days of the date of the Board's Order, remove from our files any and all references to the unlawful discipline of Bryon Belin, Willie Bigham, Tony Brown, Michael Clark, Robert Demoss, Larry Douglas, Virgil Hall, Jr., Michael Harpis, Richard Jones, Steven King, Walter Ludlum, Brian Lynn, Glen Meissner, Mark Moonschein, Maurice Pringle, Steve Rhodes, Blake Sexton, Christopher Sexton, Ward Stewart, Jason Testerman, and other similarly situated employees, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discipline will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer Richard Jones reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Richard Jones whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, plus interest.

WE WILL compensate Richard Jones for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful termination of Richard Jones and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the termination will not be used against him in any way.

CG'S LAWN & JANITORIAL SERVICE, LLC